

BEFORE THE INVESTIGATIVE PANEL OF THE
FLORIDA JUDICIAL QUALIFICATIONS COMMISSION
STATE OF FLORIDA

INQUIRY CONCERNING A JUDGE, NO. 09-524

CONFIDENTIAL

NOTICE OF INVESTIGATION

TO: The Honorable Dale C. Cohen
Broward County Courthouse
201 S.E. 6th Street, Suite 4880
Ft. Lauderdale, FL 33301

You are hereby advised that the Investigative Panel of the Florida Judicial Qualifications Commission, pursuant to Rule 6(b) of the Florida Judicial Qualifications Commission Rules, is conducting an investigation of allegations charging you with violations of the Preamble and Canons 1, 2A, 2B, 3B(1), 3B(2), and 3E(1)(d) of the Code of Judicial Conduct.

Among the specific allegations being investigated by the Commission are the following:

1. On August 28, 2009, some 22 days after the events occurring in *State v. Steven Gibbs*, Broward County Case No. 09-1421-CF 10 A, which led to your appearance before this Commission on November 6, 2009, and in response to a sworn motion to recuse filed by attorney Steve Melnick to recuse you in the matter of *State v. Leon Butler*, Broward County Case No. 08-22681-CF 10 A, you caused Mr. Melnick and his client, Leon Butler, to appear before you, and you held an evidentiary hearing.

2. When Mr. Melnick and his client appeared, you swore in his client, Mr. Butler, and began to question him about conversations he had had with his

attorney, Mr. Melnick. Mr. Melnick objected, asserting an attorney/client privilege, but you continued and stated that the privilege did not exist in your court room. You also threatened that you would file a Bar complaint against Mr. Melnick for "forum shopping." During the hearing in which you personally cross-examined the defendant, Leon Butler, Mr. Melnick continuously objected, but you ignored his objections.

3. At the conclusion of the hearing, Mr. Melnick asked the court reporter, Carrie Givens, for a transcript. He repeated the request several times. A few days later Ms. Givens called and told Mr. Melnick that she had spoken to you and that she was responding about the request for a transcript. She explained that she could not provide a transcript. She said that her machine had "jammed," even though she was able to report hearings both before and after the Butler hearing. She also said that her backup cassette was "blank." Ms. Givens is the court reporter permanently assigned to you.

4. Regarding your conduct in *State v. Gibbs*, for which you appeared before this Commission on November 6, 2009, when Mr. Gibbs came before you for sentencing, even though Mr. Melnick was no longer representing Mr. Gibbs, you questioned Mr. Gibbs about Mr. Gibbs' motion to disqualify.

5. On August 28, 2009, despite Mr. Melnick's objections that you were invading the attorney/client privilege, you ordered the defendant, Leon Butler, to answer your questions, and in spite of Rule 2.330(f), Fla.R.Jud.Admin., you held an evidentiary hearing at which you were the chief interrogator.

6. In your appearance before this Commission on November 6, 2009, you testified that Mr. Melnick went to the chief criminal administrative judge, Ilona Holmes, and complained that you had conducted a hearing on the recusal motion in *State v. Gibbs*. You testified that you were told by Judge Ilona that "you can't have hearings if somebody files a motion to recuse." You then testified that you called Mr. Melnick's office and apologized, and you testified "I agreed to blanketly agree to [sic] recuse myself on all of his cases in the future." But notwithstanding the foregoing testimony before this Commission, on August 28, 2009, you engaged in similar inappropriate conduct in *State v. Leon Butler* to which this Notice of Investigation pertains. You did not disclose to the Commission your inappropriate evidentiary hearing on August 28, 2009, with Mr. Melnick, and his client, Leon Butler.

7. This is the third notice to appear before this Commission that you have received since July, 2008. The Preamble to the Code of Judicial Conduct provides that the Code "is intended to govern conduct of judges and to be binding upon them." The Preamble also provides that this Commission should determine "whether there is a pattern of improper activity" Your continuing pattern of conduct indicates an oblivious disregard for the Code of Judicial Conduct and constitutes a pattern and practice unbecoming a judicial officer and lacking the dignity appropriate to judicial office, with the effect of bringing the judiciary into disrepute.

You are hereby invited to appear before the Investigate Panel of the Florida Judicial Qualifications Commission at 9:30 a.m., or as soon thereafter as

the matter can be heard, on the 15th day of January, 2010, in the Lee Room of the Tampa Airport, Tampa International Airport, Tampa, Florida 33607, where you shall be afforded a reasonable opportunity to make a statement before the Investigative Panel, personally or by your attorney, verbally or in writing, sworn or unsworn, explaining, refuting or admitting the alleged misconduct. Your presentation will be limited to 30 minutes. At the proceeding you will not have a right to present other testimony or evidence, nor have the right to confrontation or cross-examination of any other person interviewed, called or interrogated by the Investigative Panel; provided, that the Investigative Panel in its sole discretion may review and consider documentary evidence submitted by you, including affidavits, as prescribed in the Rules of the Florida Judicial Qualifications Commission, as revised.

The location of the meeting room in the hotel is subject to change by the hotel. Please reconfirm the room location with the front desk upon arrival at the hotel.

If you wish to submit a written response to the allegations or if you wish to submit documentary evidence which the Panel may consider, twelve copies of this response and documentary evidence must be filed with Ms. Brooke S. Kennerly, Executive Director, Judicial Qualifications Commission, 1110 Thomasville Road, Tallahassee, FL 32303, and one copy with Special Counsel, F. Wallace Pope, Jr., not later than ten days before the scheduled hearing. All documents must be softbound to facilitate mailing to the panel. If you plan to

appear at the hearing, please advise Ms. Kennerly at the same time.

JUDICIAL QUALIFICATIONS COMMISSION

By: Michael L. Schneider

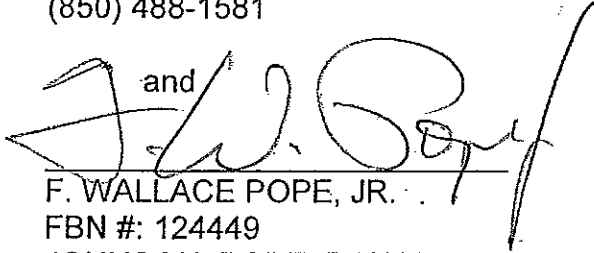
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Special Counsel for Florida

Judicial Qualifications Commission

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Notice of Investigation has been furnished by certified Mail 7001 2510 0007 6248 5668 to the Honorable Dale C. Cohen, Broward County Courthouse, Room 4880, 201 S.E. Sixth Street, Ft. Lauderdale, FL 33301, this 1st day of December, 2009.

Brooke S. Kennerly
Brooke Kennerly
Executive Director

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